IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

FRIDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

WP(C).No. 20954 OF 2003(T)

PETITIONER:

M/S. VIJAYA GLASS EMPORIUM
BAZAR RAD, KOCHI-2, REPRESENTED BY ITS PARTNER
MR.V.RAVINDRAN.

BY ADV. SRI.A.KUMAR

RESPONDENTS:

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1. COMMISSIONER OF COMMERCIAL TAXES,
TRIVANDRUM.

2. DY.COMMISSIONER OF COMMERCIAL TAXES
KOTTAYAM.

3. INTELLIGENCE OFFICER (I.B.SALES TAX)
KOTTAYAM.

GOVERNMENT PLEADER SRI. GOVINDAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) 20954/2003

ORDER ON I.A. NO. 7854/2003 IN W.P.(C) 20954/2003

PETITITONER'S EXHIBITS:

EXT.P1	TRUE COPY OF THE NOTICE DATED 22.5.2001.
EXT.P2	TRUE COPY OF THE REPLY OF PETITIONER OBJECTED TO THE EXHIBIT P1 NOTICE DATED 18.10.2001.
EXT.P3	TRUE COPY OF LETTER DATED 28.8.1999 OF SECRETARY, N.S.S.
EXT.P3A	TRUE COPY OF LETTER DATED 18.8.1999 OF VICAR, ST. JEROM'S CHURCH.
EXT.P3B	TRUE COPY OF LETTER DATED 15.9.1999 OF THE SECRETARY, SNDP YOGAM.
EXT.P4	TRUE COPY OF THE ORDER DATED 17.11.2001 PASSED BY THE 3RD RESPONDENT.
EXT.P5	TRUE COPY OF THE REVISION PETITION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.
EXT.P6	TRUE COPY OF THE ORDER CONFIRMING THE PENALTY IMPOSED PASSED BY THE 2ND RESPONDENT DATED 5.6.2002.
EXT.P7	TRUE COPY OF THE 2ND REVISION MEMORANDUM FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
EXT.P8	TRUE COPY OF THE DISMISSAL ORDER OF EXHIBIT P7 REVISION MEMORANDUM DATED 28.4.2003 PASSED BY THE 1ST RESPONDENT.

RESPONDENTS' EXHIBITS:

NIL.

// TRUE COPY //

P.S. TO JUDGE.

knc/-

P.R. RAMAN, J.

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W.P.(C) NO. 20954 OF 2003

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DATED THIS, THE 25TH DAY OF MAY, 2007.

J U D G M E N T

Petitioner is an assessee under the Kerala General Sales tax Act. He is engaged in the business of sale of chairs, glass and other goods and has branches in Mattacherry at Ernakulam and Nagampadam in Kottayam. During the year 1999-2000 the Intelligence Officer (I.B- Sales Tax) - the third respondent herein issued a notice - Ext.P1 to the petitioner, proposing to levy penalty under Section 45A of the Kerala General Sales tax Act alleging that he had collected orders for plastic chairs from three different parties in Kerala and effected supplies which reflected as though it is a sale by the suppliers located outside Kerala as an interstate sale. Petitioner, in his reply Ext.P2, objected to the levy of penalty and contended that they had only canvassed orders for M/s. Monalisa Multi Plast Ltd. and on the basis of the orders canvassed by them, goods were dispatched to the parties directly by the Company. Letters were issued by the parties to the check post authorities intimating them of the orders and the consignment.

According to the petitioner, in this transaction, he gets only a commission as a canvassing agent. Reliance was also placed on the letters issued by the abovesaid three parties, which are produced as Exts. P3,P3A and P3B respectively. According to the petitioner, he had in fact forwarded the money collected from the parties to the supplier on the date on which the purchase orders were placed and the copies of Demand Draft indicating the money was also forwarded to the Company. The Intelligence Officer, after hearing the petitioner and considering the entire materials on record, over ruled the objections and confirmed the proposal and imposed a penalty of Rs.1,42,269/-, being double the amount of tax due on the suppressed turnover of Rs.7,11,344/-, under Section 45A of the Kerala General Sales Tax Act, for the offence of failure to keep true and correct accounts for the year 1999-2000. Copy of the said order dated 17.11.2001 is produced as Ext.P4 in this writ petition. Though the assessee preferred a revision to the Deputy Commissioner, he did not find any reason to interfere with the order passed by the Intelligence Officer and accordingly, dismissed. the revision confirming the order passed by the Intelligence officer. This was again confirmed by the Commissioner of Commercial Taxes in the second revision. Exts.P6 and P8 are respectively the orders passed by the Deputy

Commissioner and the Commissioner. Aggrieved thereby, petitioner has filed this writ petition.

2. Learned counsel for the petitioner reiterated the contention as raised before the authorities below. He further contended that even assuming that there was any suppression, the amount of penalty imposed on the petitioner taking the alleged suppressed value as Rs. 7,11,344/- is without any basis. He also submitted that though a specific contention was raised before the Deputy Commissioner and before the Commissioner of Commercial Taxes, this aspect was not dealt with in the order passed by those authorities. According to him, the amount of tax calculated on the alleged suppressed turnover of Rs. 7,11,344/- is absolutely without any basis or materials since when all the transactions in question put together, it will come to a sale turnover of Rs. 1,98,313/- and the challenge as regards the turnover arrived at was also not considered. Hence He submits that the penalty imposed on such alleged suppressed turnover is excessive.

3. Learned Government Pleader appearing on behalf of the State, however, would submit that this figure of Rs. 7,11,346/- was taken from the books of accounts of the petitioner. However, he fairly submitted that there is nothing in the order passed by the Intelligence Officer to indicate the

manner and the basis on which this figure was arrived at.

4. Heard both sides. The Intelligence Officer, by Ext.P4 found that orders taken by the petitioner in the capacity of a dealer and goods were supplied by him immediately on receipt of the order from the parties concerned and accepted the sale proceeds then and there. Thereafter, he obtained certificate issued by local body to the concerned party and managed to transport the same quantity of chair with the said certificate as direct sale to the party. Actually, the goods were supplied to the party by the petitioner and the stock was recouped by transporting the goods subsequently and this fact shows that there is no direct sale or interstate sale under CST Act with the Daman Company to the Kerala Parties. The verification of the books of accounts of the petitioner also revealed that he accepted the sale amount and credited the same in the direct sales account as remittance from parties on the same date of receipt and the debit entry records only on the date of goods actually received from his principal M/s. Monalisa Multi Plast Ltd.. It was also revealed that the ledger account along with other transactions with that company also proved that Daman Company had transaction only with the petitioner. Even though the assessee was asked to produce the remaining books of accounts and details

to prove his contention, he did not produce the same. Hence the Intelligence Officer concluded that it is eventually clear that there was no direct sale of goods and the assessee had intentionally acted so as to evade tax legitimately due to the State Exchequer.

5. The details of the investigation and the evidence collected are narrated in paragraph 2 of Ext.P4 order. The Deputy Commissioner also considered the contention of the petitioner and found that there is no basis or supporting reasons to hold that the sales were effected directly by the Company to the supplier concerned. He has given valid reasons for rejecting the contention of the petitioner and for accepting the orders passed by the Intelligence Officer and the reasons thereof. The Commissioner of Commercial Taxes , in second revision also, confirmed the view taken by the lower authorities.

6. I have carefully gone through the three orders passed by the authorities below and also considered the contention of the petitioner. On a perusal of these orders, it can be seen that the authorities below have come to the conclusion that the purchases were not done directly but were interstate transaction and thereby there was an attempt to evade tax by the petitioner. Therefore, the finding that this is a case where accounts were

not properly maintained, for which offence penalty should be imposed under Section 45A of the Act cannot be assailed for any valid reasons. I confirm the same. But the petitioner, in his revisional memorandum before the Deputy Commissioner, has specifically urged in Ground No.6 as follows:

> "Intelligence Officer has not alleged any instance of suppression in interstate purchase. No material is disclosed to support the alleged suppression of Rs. 7,11,344/-. No material was brought on record to justify the imposition of penalty on the so called turnover."

7. However, the Deputy Commissioner did not consider this contention. Nor the Commissioner in the second revision considered this. Going through the order of the Intelligence Officer, I am unable to find any supporting reason for arriving at the figure of Rs. 7,11,344/-. Therefore, this is a matter which requires reconsideration at the hands of the Deputy Commissioner.

8. Accordingly, the orders passed by the Deputy Commissioner and Commissioner as per Exts.P6 and P8 are set aside to the limited extent of re-considering the quantum of penalty that is to be imposed on the petitioner. The finding of guilt and the finding that the petitioner has not

maintained proper accounts and he is liable to be imposed fine are all sustained. The matter is remanded to the Deputy Commissioner to fix the quantum of liability. The amount already paid by the petitioner as per the interim order will be adjusted after final order is passed.

9. The Deputy Commissioner shall consider and dispose of the matter within a period of three months after receipt of a copy of this judgment, after affording an opportunity of being heard to the petitioner.

The writ petition is thus allowed by way of remand.

P.R. RAMAN,
(JUDGE)

knc/-

P.R. RAMAN, J.
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W.P.(C) 20954/2003
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J U D G M E N T

25th May, 2007.